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ABSTRACT

The U.S. Supreme Court ruled in June 1972 on a case involving changes in boundaries of a county school district in Virginia which had been operated as a dual school system. Two weeks after a federal district Court ordered a school-pairing plan, the Emporia City Council announced that city's intention to operate an independent school system. The Supreme Court forbade the breakaway. The same day the Court invalidated a North Carolina statute that authorized creation of a new school district for the city of Scotland Neck. The Supreme Court had not treated the extent of the power of federal courts to order remedies for segregation which would affect directly school districts other than the one at bar in a given case. If a formerly de jure segregated district contains at the time of adjudication such a high per cent of blacks that meaningful racial mixing cannot take place because of the small per cent of whites attending the district's schools, does the federal Constitution require that adjacent districts heavily populated by whites participate in remediating the situation? By a five-to-four vote, on July 25, 1974, the Supreme Court in what has come to be known as the "Detroit case" answered, in effect, "not if those surrounding districts were not themselves involved in discriminatory acts". (Author/JM)

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LAW

E. Edmund Reutter, Jr.

School District Boundaries and Desegregation

The remarkable unanimity of the Justices of the United States Supreme Court in decisions related to desegregation of public schools came to an end in June 1972 in a case involving changes in boundaries of a county school district in Virginia which had been operated as a dual school system.[1] The community of Emporia changed legal status and became, instead of a "town," a politically independent "city." The latter status carried the authorization to operate a school system separate from that of Greensville County. At first the new city and the county mutually agreed to be designated a single school system by the State Board of Education, in effect continuing the prior educational arrangement so far as students residing in Emporia were concerned.

Very little desegregation had taken place in the county when in June of 1969 the federal District Court ordered a school-pairing plan into effect that fall. Two weeks after the District Court entered its decree, the Emporia City Council sent a letter to the county officials announcing the city's intention to operate a school system separate from the county as of September. The county school board adopted a resolution stating that the proposed action was "not in the best interests of the children in Greensville County," but it took no position in court. The District Court found that the establishment of a separate school system would interfere with and frustrate the order to desegregate by the pairing plan. The Court of Appeals for the Fourth Circuit reversed, but continued the bar on the separate system pending action by the United States Supreme Court.

The Supreme Court by a vote of five-to-four, with Justice Stewart writing the opinion, held that the District Court had been correct in forbidding the breakaway. The city argued that it had the power to take the proposed action because a valid state law permitted cities to operate their own schools

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independent of the counties, the boundaries of the city were not drawn so as to exclude Negroes, and the disparity of the racial balance of the city and county schools was not great. The first two points were undisputed, and the majority of the Court in ruling against the city said, "We need not and do not hold that this disparity in the racial composition of the two systems would be a sufficient reason, standing alone, to enjoin the creation of the separate school district." The Court referred to its statement in 1971 that "the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole."

"But there is more to this case than the disparity in racial percentages reflected by the figures supplied by the school board." The Court made three points. First, there was a District Court finding that if Emporia were allowed to withdraw from the existing system, it could be anticipated that the proportion of whites in the county would drop by registrations in private academies, while some whites might return to the city schools from private schools in which they had been enrolled. Second, "the significance of any racial disparity in this case is enhanced by the fact that the two formerly all-white schools are located within Emporia, while all the schools located in the surrounding county were formerly all-Negro. The record further reflects that the school buildings in Emporia are better equipped and are located on better sites than are those in the county." Third, the timing of Emporia's action communicated a message which "cannot have escaped the Negro children in the county," and its phychological effect was a proper consideration of the District Court.

Officials of Emporia also argued unsuccessfully that they needed a separate system to achieve "quality education" for city residents. Under the facts the Court said the "persuasiveness of the 'quality education' rationale was open to question." It added, "More important, however, any increased quality of education provided to city students would . . . have been purchased only at the price of a substantial adverse effect upon the viability of the county system. The District Court, with its responsibility to provide an effective remedy for segregation in the entire city-county system, could not properly allow the city to make its part of that system more attractive where such a result would be accomplished at the expense of the children remaining in the county." The Court observed, however, that the injunction issued by the District Court "does not have the effect of locking Emporia into its present circumstances for all time." It summarized its holding as follows:

> [O]ur holding today does not rest upon a conclusion that the disparity in racial balance between the city and county schools resulting from separate systems would, absent any other considerations, be unacceptable. The city's creation of a separate school system was enjoined because of the effect it would have had at the time upon the effectiveness of the remedy ordered to dismantle the dual system that had long existed in the area. Once the unitary system has been established and accepted, it may be that Emporia, if it still desires to do so, may establish an independent system without such an adverse effect upon the students remaining in the county, or it may be able to work out a more satisfactory arrangement with the county for joint operation of the existing system. We hold only that a new school district may not be created where its effect would be to impede the process of dismantling a dual system. And in making that essentially factual determination in any particular

case, "we must of necessity rely to a large extent, as this Court has for more than 16 years, on the informed judgment of the district courts in the first instance and on courts of appeals."

The dissenting opinion, written by Chief Justice Burger, indicated basic agreement on principle, but disagreement on application to the facts. The dissent included the following:

> If it appeared that the city of Emporia's operation of a separate school system would either perpetuate racial segregation in the schools of the Greensville County area or otherwise frustrate the dismantling of the dual system in that area, I would unhesitatingly join in reversing the judgment of the Court of Appeals and reinstating the judgment of the District Court. However, I do not believe the record supports such findings and can only conclude that the District Court abused its discretion in preventing Emporia from exercising its lawful right to provide for the education of its own children.

In another case decided the same day all nine Justices voted to invalidate a North Carolina statute that authorized creation of a new school district for the city of Scotland Neck, a part of the Halifax County school district then in the process of dismantling a dual school system. As in the preceding Virginia case, a federal District Court had enjoined the proposed action and the Fourth Circuit Court of Appeals had reversed. Again the Supreme Court supported the District Court's handling of the case. The Court said:

> The Court of Appeals did not believe that the separation of Scotland Neck from the Halifax County system should be viewed as an alternative plan for desegregating the county system, because the "severance was not part of a desegregation plan proposed by the school board but was instead an action by the Legislature redefining the boundaries of local governmental units." . . . This suggests that an action of a state legislature affecting the desegregation of a dual system stands on a footing different from an action of a school board. But . . . we [have] held that "if state-imposed limitation on a school authority's discretion operates to inhibit or obstruct . . . the disestablishment of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees." . . . The fact that the creation of the Scotland Neck school district was authorized by a special act of the state legislature rather than by the school board or city authorities thus has no constitutional significance.

The Court found that "by any standard of measurement" the disparity in the racial composition of the two school districts to be formed by the separation would be "substantial" (57% white in one and 11% white in the other). The four Justices who had dissented in the Emporia case joined in a concurring opinion, explaining that in the Scotland Neck case not only would the disparity in racial composition of the schools be great, but also that there was no reason for the legislation except to avoid impending desegregation in the area.

Thus, the Supreme Court clarified what to those of enlightenment and good will hardly warranted explicit statement on the policy level – that state or local officials must not carve out new school districts from an old one that is in the process of dismantling a dual system. But not treated was the extent of the power of federal courts to order remedies for segregation which would affect directly school districts other than the one at bar in a given case. If formerly de jure segregated district contains at the time of adjudication such a high per cent of blacks that meaningful racial mixing cannot take place because of the small per cent of whites attending the district's schools, does the federal Constitution require that adjacent districts heavily populated by whites participate in remediating the situation?

By a five-to-four vote, on July 25, 1974, the Supreme Court in what has come to be known as the "Detroit case" answered, in effect, "not if those surrounding districts were not themselves involved in discriminatory acts."[5] The Court, with Chief Justice Burger writing the opinion, said:

> We granted certiorari . . . to determine whether a federal court may impose a multidistrict, areawide remedy to a single district de jure segregation problem absent any finding that the other included school districts have failed to operate unitary school systems within their districts, absent any claim or finding that the boundary lines of any affected school district were established with the purpose of fostering racial segregation in public schools, absent any finding that the included districts committed acts which effected segregation within the other districts, and absent a meaningful opportunity for the included neighboring school districts to present evidence or be heard on the propriety of a multidistrict remedy or on the question of constitutional violations by those neighboring districts.

In so framing the question before it, the Court set out the flaws in the lower courts' disposition of the case, which had been to conclude that "the only feasible desegregation plan involves the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts for the limited purpose of providing an effective desegregation plan." The Sixth Circuit Court of Appeals had said that such a plan would be "appropriate" because of certain acts of the State (the board of education of Detroit being an instrumentality of the State and the state legislature and state board of education having contributed to the Detroit situation by certain actions and inactions in regard to funding, construction, and transportation, and that it could be implemented because of the State's "authority to control local school districts." The District Court had been ordered, however, to give suburban school districts that might be affected by an inter-district order an opportunity to be heard with respect to the scope and implementation of such a remedy.

That there was de jure segregation in Detroit was affirmed by the Supreme Court, and the lower courts were instructed to promptly formulate a decree to eliminate it within the district. But the Court rejected the lower courts' statement that "school district lines are no more than arbitrary lines on a map 'drawn for political convenience.'" The Court said:

> Boundary lines may be bridged where there has been a constitutional violation calling for inter-district relief, but the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.

The Court expressed concern about problems that would develop if the 54 independent school districts included in the

possible metropolitan plan were, in effect, consolidated. Included would be 276,000 students in Detroit and some 503,000 students in the other 53 districts in the "desegregation area." The Court stated:

> Entirely apart from the logistical and other serious problems attending large-scale transportation of students, the consolidation would give rise to an array of other problems in financing and operating this new school system. Some of the more obvious questions would be: What would be the status and authority of the present popularly elected school boards? Would the children of Detroit be within the jurisdiction and operating control of a school board elected by the parents and residents of other districts? What board or boards would levy taxes for school operations in these 54 districts constituting the consolidated metropolitan area? What provisions could be made for assuring substantial equality in tax levies among the 54 districts, if this were deemed requisite? What provisions would be made for financing? Would the validity of long-term bonds be jeopardized unless approved by all of the component districts as well as the State? What body would determine that portion of the curricula now left to the discretion of local school boards? Who would establish attendance zones, purchase school equipment, locate and construct new schools, and indeed attend to all the myriad day-to-day decisions that are necessary to school operations affecting potentially more than three quarters of a million pupils?

The Court further observed that in resolving the problems the District Court would first take on a legislative function and then an administrative one. "This is a task which few, if any, judges are qualified to perform and one which would deprive the people of control of schools through their elected representatives."

Emphasis was placed on the fact that evidence of de jure segregated conditions was presented only for Detroit schools. The Court stated that "the constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in that district." Except for one relatively minor instance, there was no evidence that any acts of any other district may have affected the de jure condition in Detroit.

In light of the misconstructions which have been given this case, it should be stressed that the Court did not rule out cross-district remedies per se. It did set the standards to be met before a federal court can order them:

> [I]t must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by the constitutional violation.

In a concurring opinion "in view of some of the extravagant language of the dissenting opinions," Justice Stewart undertook "to state briefly my understanding of what it is that the Court decides today." His opinion included the following:

> This is not to say . . . that an inter-district remedy of the sort approved by the Court of Appeals would not be proper, or even necessary, in other factual situations. Were it to be shown, for example, that state officials had contributed to the separation of the races by drawing or redrawing school district lines, . . . , by transfer of school units between districts, . . . , or by purposeful racially discriminatory use of state housing or zoning laws, then a decree calling for transfer of pupils across district lines or for restructuring of district lines might well be appropriate.

Although the holding was a set-back for those desiring more racial integration in metropolitan area schools, it foreclosed only one strategy for achieving it (i.e., proving de jure segregation in one district that has predominantly black students and that is adjacent to districts having only small black populations). Voluntary inter-district arrangements are not legally impeded. Compulsory inter-district arrangements (including changing district boundaries) remain within the power of the individual states to order. And, of course, proof of segregative governmental acts at any time by suburban school boards or by state-level agencies remains a predicate for constitutionally required corrective action. Legal, as well as moral, hope for effective metropolitan integration was not snuffed out by the Detroit case.

Citations

1. Wright v. Council of City of Emporia, 92 S.Ct. 2196 (1972).
2. "Data submitted to the District Court . . . showed that the school system in operation under the 'pairing' plan, including both Emporia and the county, had a racial composition of 34% white and 66% Negro. If Emporia had established its own system, and had total enrollment remained the same, the city's schools would have been 48% white and 52% Negro, while the county's schools would have been 28% white and 72% Negro."
3. Swann v. Charlotte-Mecklenburg Board of Education, 91 S.Ct. 1267 (1971). See Law article in June 1974 issue of the Research Bulletin.
4. United States v. Scotland Neck City Board of Education, 92 S.Ct. 2214 (1972).
5. Milliken v. Bradley, 94 S.Ct. 3112 (1974).